

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RANDALL HOLCOMB, M.D.

Plaintiff,

vs.

METHODIST HEALTHCARE-MEMPHIS
HOSPITALS, METHODIST LE BONHEUR
HEALTHCARE, INC., METHODIST
SURGERY CENTER - GERMANTOWN, L.P.,
SOLUS MANAGEMENT SERVICES, INC.,
METHODIST LE BONHEUR HEALTHCARE
BOARD OF DIRECTORS, THOMAS P. BRABYN,
ROBERT RILEY JONES, M.D. and
EUGENE K. CASHMAN, III,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Methodist - Healthcare Memphis Hospitals, Methodist Le Bonheur Healthcare, Methodist Surgery Center Germantown, L.P., Solus Management Services, Inc., Thomas P. Brabyn, and Eugene K. Cashman III (collectively, “Defendants”), with the consent of Co-Defendant Riley Jones, M.D., give notice of the removal of this Complaint seeking injunctive relief and damages (“Complaint”) from the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis to the United States District Court for the Western District of Tennessee, Western Division. In support of the Notice of Removal, Methodist states as follows:

INTRODUCTION

1. On or about July 21, 2017, Dr. Randall Holcomb, M.D. (“Dr. Holcomb” or “Plaintiff”) filed a Complaint in the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, Docket No. CH-17-1052.
2. This Notice of Removal is timely under 28 U.S.C. § 1446(b).
3. The Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis is located within the district of the United States District Court for the Western District of Tennessee. Venue is proper in this Court, as any civil action for which a district court has original jurisdiction “may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

THE PARTIES

4. According to the Complaint, the Plaintiff is a physician, licensed to practice medicine in the State of Tennessee and a resident of the State of Tennessee. (*See* Complaint, Attached as **Exhibit A**, ¶ 1.)

5. Methodist Healthcare- Memphis Hospitals is a non-profit corporation organized and existing under Tennessee law. Methodist Le Bonheur Healthcare is a non-profit corporation organized and existing under Tennessee law. Methodist Surgery Center Germantown, L.P. is a Limited Partnership organized and existing under Tennessee law. Solus Management Services, Inc. is a corporation organized and existing under Tennessee law. The individuals, Thomas P.

Brabyn, Eugene K. Cashman III, and Robert Riley Jones, M.D. are residents of the state of Tennessee.

6. All Defendants capable of being sued consent to the removal of this action¹ as evidenced by Defendant Robert Riley Jones, M.D.'s Joinder and Consent to Removal, attached hereto as **Exhibit B**.

FEDERAL QUESTION JURISDICTION

1. Plaintiff's third cause of action, as stated in the Complaint, alleges violations of 42 U.S.C. § 1983. (See Compl. ¶¶ 33-36.) In support of Plaintiff's § 1983 claim, Plaintiff alleges that Defendants' "wrongful and continued precautionary suspension of [Plaintiff's] privileges" deprived him "of procedural and substantive due process in violation of 42 U.S.C. § 1983." (See *id.*)

2. The above-described action is one over which the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1331. The Complaint presents a federal question and is appropriate for removal to this Court. (See *id.*)

3. Removal of this action is authorized pursuant to 28 U.S.C. §§ 1441 and 1446.

4. This Court has the discretion to exercise supplemental jurisdiction over any and all other claims asserted by Plaintiff pursuant to 28 U.S.C. §§ 1337 and 1441.

¹ "Methodist Le Bonheur Healthcare's Board of Directors" is not an existing legal entity, and cannot be properly joined or served in this matter. Accordingly, the non-existent entity named as "Methodist Le Bonheur Healthcare's Board of Directors" is not required or able to join or consent in the removal of this case. *Newsom v. Caliber Auto Transfer of St. Louis, Inc.*, 2009 WL 4506298, at *2 (S.D.Ill. Nov. 26, 2009) ("[A] defendant that is a non-existent business entity is not required to join in or consent to the removal of a case"); see also *Stowe v. Flagstar Bank, FSB*, No. 12-1050, 2012 WL 12933223, at *1 (W.D. Tenn. Dec. 5, 2012); *City of Cleveland v. Deutsche Bank Tr. Co.*, 571 F. Supp. 2d 807, 820 (N.D. Ohio 2008).

PROCEDURAL REQUIREMENTS

5. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, and other papers on file in the state court are attached as **Exhibit C**.

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of receipt “by the defendant(s), through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b).

7. Pursuant to 28 U.S.C. § 1446(d), concurrent with the filing of this Notice of Removal, Defendants are giving written Notice of Filing of Removal to the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis. A copy of this Notice of Removal has been served via United States Mail on all counsel of record. A copy of the Notice to counsel and to the Clerk of Court is attached as **Exhibit D**.

8. By filing the instant Notice of Removal, Defendants do not waive, and fully reserve, all procedural and substantive defenses they may have.

9. WHEREFORE, Defendants requests that the above-captioned action now pending in the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis be removed to the United States District Court for the Western District of Tennessee, and that the District Court assume jurisdiction over this lawsuit.

RESPECTFULLY SUBMITTED,

s/Quinn Carlson

BUCKNER P. WELLFORD (#9687)
QUINN CARLSON (#25603)
MITCHELL S. ASHKENAZ (#34129)
BAKER, DONELSON, BEARMAN
CALDWELL & BERKOWITZ, PC
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103
Telephone 901.526.2000
Facsimile 901.577.0730

*Attorneys for Defendants Methodist
Healthcare - Memphis Hospitals, Methodist
Le Bonheur Healthcare, Methodist Surgery
Center Germantown, L.P., Solus
Management Services, Inc., Thomas P.
Brabyn, and Eugene K. Cashman III*

CERTIFICATE OF SERVICE

I hereby certify that on this day of August 18, 2017, a true and correct copy of the foregoing will be served electronically via operation of the electronic filing system of the United States District Court, Western District of Tennessee, Western Division upon the following:

C.J. Gideon, Jr.
Lee T. Nutini
GIDEON, COOPER & ESSARY PLC
315 Deadrick Street, Suite 1100,
Nashville, TN 37238
Attorneys for Plaintiff

J. Kimbrough Johnson
LEWIS, THOMASON, KING, KREIG & WALDROP, P.C.
One Commerce Square, 29th Floor
40 South Main Street
Memphis, Tennessee 38103
Attorney for Defendant Robert Riley Jones, M.D.

s/Quinn Carlson